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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
Universal Service Contribution Methodology )  
 )  
Request for Review by )  
Waterway Communication System, LLC and )  
Mobex Network Services, LLC of )  
Decision of the Universal Service Administrator )

WC Docket No. 06-122

FILED/ACCEPTED

SEP 25 2008

Federal Communications Commission  
Office of the Secretary

To: Marlene H. Dertch, Secretary  
Attention: Chief, Wireline Competition Bureau

PETITION FOR RECONSIDERATION

Maritime Communications/Land Mobile, LLC (MC/LM), by its attorney, hereby files its Petition for Reconsideration of the Order of the Chief, Wireline Competition Bureau (the Bureau) denying MC/LM's Request for Review of a decision of the Universal Service Administrator (DA 08-1971 Released August 26, 2008). In support of its position, MC/LM shows the following.

The Bureau was in error in determining that Waterway Communication System, LLC (Watercom) and Mobex Network Services, LLC (Mobex) were classified as Commercial Mobile Radio Service operators during the relevant period of time.<sup>1</sup> The Bureau incorrectly resolved a contradiction in Second Report and Order in Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411 (1994) (CMRS SR&O) as applied to the instant matter.

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<sup>1</sup> MC/LM is requesting refund of Universal Service Fund contributions made by Watercom and by Mobex during the period 2001 through 2006.

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The Bureau also incorrectly took into account a change in the Commission's Rules which occurred after the relevant period of time.

This matter turns on the application of two paragraphs of the CMRS SR&O to the instant matter. At paragraph 67 of the CMRS SR&O, relied on by MC/LM, the Commission explained that in applying the statutory language to determine whether a provider is a CMRS operator, it looked to several relevant factors, such as the type, nature and scope of users for whom a service is intended. The Commission explained specifically that

in the case of existing eligibility classifications under our Rules, service is not "effectively available to a substantial portion of the public" if it is provided exclusively for internal use or is offered only to a significantly restricted class of eligible users, as in the following services: (1) Public Safety Radio Services; (2) Special Emergency Radio Service; (3) Industrial Radio Services (except for Section 90.75, Business Radio Service); (4) Land Transportation Radio Services; (5) Radiolocation Services; (6) Maritime Service Stations; and (7) Aviation Service Stations,

CMRS SR&O at para. 67. Omitted footnotes after each Radio Service refer to specific Rule Sections. The footnote for Maritime Service Stations referred to 47 C.F.R. §80.15, which includes all Maritime Service Stations, including Public Coast stations of which Automated Maritime Telecommunication System (AMTS) stations are a species.

The Bureau's Order made no reference to paragraph 67 of the CMRS SR&O and relied, instead, on paragraph 83 of the SR&O which stated that

the Notice proposed to classify all mobile service licensees in the Part 80 marine services and Part 87 aviation services (with the exception of Public Coast Station licensees, who are currently regulated as common carriers) as PMRS on the grounds that these are not-for-profit systems. We also proposed to classify personal mobile radio services under Part 95 as PMRS on the same basis. The comments generally support this approach. n175 Therefore, we conclude that all

mobile services under Parts 80, 87, and 95 will be classified at PMRS, except for Public Coast Station service (Part 80, Subpart J), which will be classified as CMRS,

CMRS SR&O para. 83. The Commission referred to paragraph 67 as the operative paragraph in its Report and Order in CC Docket No. 96-45, 12 FCC Rcd 8776, 9178 (1997) (Universal Service Fund First Report and Order).

The contradiction between paragraph 67 and paragraph 83 of the CMRS SR&O is obvious. AMTS operators be excluded from the category of CMRS by the fact that they serve only a limited class of users and their service is not effectively available to a substantial portion of the public and simultaneously be declared to be CMRS operators. The Bureau did not correctly resolve the contradiction. Rather, the Bureau's order did not even mention paragraph 67 or the facts which demonstrate that, during the relevant period of time, Watercom and Mobex could not reasonably have been classified as CMRS operators pursuant to 47 U.S.C. §332(d) of the Communications Act of 1934, as amended.

Three years after the release of the CMRS SR&O, the Commission released its Universal Service Fund First Report and Order. The Commission's reference to and reliance on paragraph 67 of the CMRS SR&O in its Universal Service Fund First Report and Order and the Commission's disregard of paragraph 83 in deciding which entities should be subject to USF contribution requirements should have been determinative for the Bureau and the Bureau should have held that Watercom and Mobex were not CMRS operators.

The Bureau's Order failed to consider MC/LM's explanation of the reasons why Watercom and Mobex could not have been found to be CMRS operators during the relevant period of time. MC/LM explained that among the factors which limited Watercom and Mobex to service to a limited class of users and prevented them from making their service effectively available to a substantial portion of the public were geographic restrictions which the Commission's Rules imposed on the siting of AMTS stations, including service only to certain classes of waterways and service requiring a minimum of two stations, and service only at locations which would not result in interference to television stations on certain channels; a limitation on the class of land users to those who were willing to accept a second, lower priority of service; and a limitation which prohibited service to customers which require direct communication between customer mobile units.

The Bureau appeared to rely on United States Telecom Assn. v FCC, 295 F.3d 1326 (D.C. Cir. 2002) for an alternative basis for finding that Watercom and Mobex were CMRS operators. However, there were no facts of record to support a conclusion that Watercom and Mobex offered indiscriminate service to whatever public its service may legally have been of use. Therefore, there was no alternative basis for the Bureau's incorrect finding that Watercom and Mobex were CMRS operators.

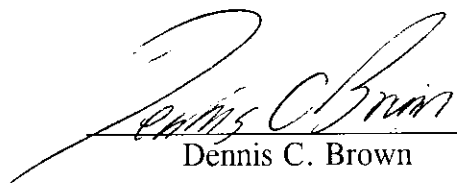
The Bureau's reliance on the Commission's Order in Maritel, Inc. and Mobex Network Services, LLC, 22 FCC Rcd 8971 (2007) (the Maritel and Mobex Order) was misplaced. As the Bureau's Order noted at its paragraph 6, MC/LM is seeking a refund only for Universal Service

Fund contributions paid from 2001 to 2006. Accordingly, the rule amendments adopted in the Maritel and Mobex Order in 2007 had no relevance to the instant matter and should not have been considered by the Bureau.

Conclusion

For all the foregoing reasons, MC/LM requests that the Bureau reconsider its Order and order the Universal Service Fund Administrator to make the requested refund.

Respectfully submitted,



Dennis C. Brown

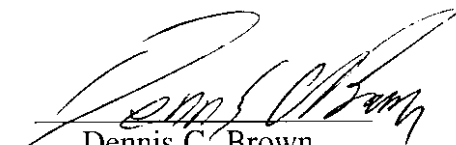
8124 Cooke Court, Suite 201  
Manassas, Virginia 20109-7406  
703/365-9437

Dated: September 25, 2008

Certificate of Service

I hereby certify that on this twenty-fifth day of September, 2008, I served a copy of the foregoing Request for Review on the following person by placing a copy in the United States Mail, first-class postage prepaid:

W.B. Erwin, Director of Finance  
Universal Service Administrative Company  
2000 L Street, NW, Suite 200  
Washington, DC 20036



Dennis C. Brown